

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BENJAMIN FRANKLIN,

Plaintiff,

-v.-

9: 03-CV-1452
(LEK)(DEP)

JOHN DOE 1, Correctional Officer assigned to S.H.U. at Oneida Correctional Facility on April 7, 2003; JOHN DOE 2, Correctional Officer assigned to S.H.U. at Oneida Correctional Facility on April 7, 2003; and JOHN DOE 3, Rounds Man assigned to S.H.U. at Oneida Correctional Facility on April 7, 2003,

Defendants.

APPEARANCES:

BENJAMIN FRANKLIN, 90-T-4572
Plaintiff, pro se
Clinton Correctional Facility
P.O. Box 2001
Dannemora, New York 12929

LAWRENCE E. KAHN, District Judge

ORDER

Plaintiff Benjamin Franklin ("plaintiff") commenced this action by filing a complaint on December 5, 2003. Dkt. No. 1. By Order of this Court filed December 22, 2003 ("December order") plaintiff was ordered to file an amended complaint.¹ Dkt. No. 5. The December order found, *inter alia*, that plaintiff's complaint was incomplete and disjointed, did not name specific defendants responsible for the alleged wrongdoing, and did not clearly state the dates or location of the alleged wrongdoing. *Id.* On January 8, 2004 plaintiff filed an amended complaint in compliance with the December order. Dkt. No. 7.

¹ The December order also granted plaintiff's *in forma pauperis* application.

By Order of this Court filed February 3, 2004 ("February order"), plaintiff's first amended complaint was found to be deficient because the only defendant named was absolutely immune from this lawsuit. Dkt. No. 12. On March 4, 2004 plaintiff filed a second amended complaint which contained only "John Doe" defendants. Dkt. No. 13. By Order of this Court filed April 23, 2004, plaintiff was advised to take reasonable steps to ascertain their identities and upon learning some or all of their identities, file another amended complaint with the Court substituting named defendants in place of the John Doe defendants. Plaintiff thereafter filed a third amended complaint (Dkt. No. 19) which was stricken from the Court's docket by Order of this Court filed on February 25, 2005. Dkt. No. 25. The third amended complaint did not contain a caption and did not clearly identify the defendants to be named. *Id.* Plaintiff was permitted to file another amended complaint. *Id.*

Presently before the Court is a fourth amended complaint submitted by plaintiff. The most recent amended complaint includes three newly named defendants – Lt. Santos, Mr. D.J. Mullen, and Mr. Austin. The amended complaint also names one John Doe defendant. In the amended complaint, plaintiff alleges that beginning on March 21, 2003, while plaintiff was incarcerated at Oneida Correctional Facility, the defendants assaulted plaintiff and denied plaintiff medical care in deliberate indifference to his serious medical needs. See Dkt. No. 26. Plaintiff's amended complaint may be properly filed.

WHEREFORE, it is hereby

ORDERED, that the following defendants are dismissed from this action: "John Doe 1, Correctional Officer assigned to S.H.U. at Oneida Correctional Facility on April 7, 2003;" "John Doe 2, Correctional Officer assigned to S.H.U. at Oneida Correctional Facility on

April 7, 2003;" and "John Doe 3, Rounds Man assigned to S.H.U. at Oneida Correctional Facility on April 7, 2003." In place of the dismissed defendants, the Clerk is directed to add "Lt. Santos," "Mr. D.J. Mullen, Correctional Officer," "Mr. Austin, Correctional Officer" and "John Doe, Unknown Correctional Officer" as new defendants to this action, and it is further

ORDERED, that the Clerk shall issue summonses and forward them, along with copies of the amended complaint, to the United States Marshal for service upon the named defendants. The Clerk shall forward a copy of the summons and complaint by mail to the Office of the Attorney General for the State of New York, together with a copy of this Order, and it is further

ORDERED, that a response to plaintiff's complaint be filed by the defendants or their counsel as provided for in the Federal Rules of Civil Procedure after service of process on the defendants, and it is further

ORDERED, that the plaintiff take reasonable steps to ascertain the identity of any other individual that purportedly violated plaintiff's civil and/or constitutional rights. Plaintiff may then file a motion to amend his complaint and seek leave of the Court to add the individual, by name, as a defendant to this lawsuit. Plaintiff is further advised that if this individual is not timely served, this action will be dismissed as against such individual, and it is further

ORDERED, that all pleadings, motions and other documents relating to this action shall be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367.

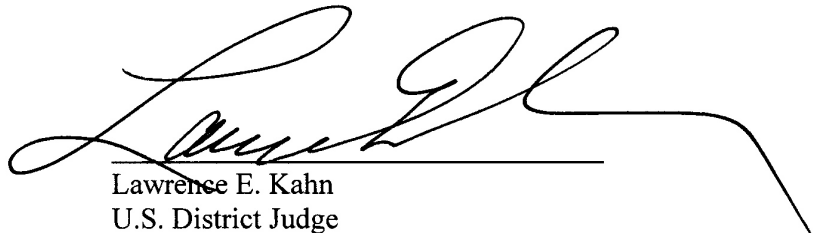
Any paper sent by a party to the Court or the Clerk shall be accompanied by a

certificate setting forth the date a true and correct copy of it was mailed to all opposing parties or their counsel. Any letter or other document received by the Clerk or the Court which does not include a proper certificate of service is to be returned without processing. Plaintiff shall also comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action. Motions must comply with Local Rule 7.1 of the Northern District of New York and are to be made returnable before the assigned Magistrate Judge on any business day with proper allowance for notice as required by the Rules. Plaintiff is also required to promptly notify the Clerk's Office of any change in his address; his failure to do this will result in the dismissal of this action. All motions will be decided on submitted papers, without oral argument, unless otherwise ordered by this Court, and it is further

ORDERED, that the Clerk serve a copy of this Order on plaintiff by regular mail.

IT IS SO ORDERED.

Dated: May 10, 2005
Albany, New York



Lawrence E. Kahn
U.S. District Judge